

## Un'invenzione che ha cambiato il modo di concepire il diritto: la giustizia costituzionale



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**Decisione** control over the constitutionality of legislation originated in the United States, where such a fundamental institution was introduced by the decision of the Supreme Court in *Marbury v. Madison* in 1803, and from that moment on, it has always been confirmed and developed. Previously, similar solutions had been debated since ancient times, but they had not found their way in the courts. On the contrary, the model of «constitutional justice», once established in the United States, spread to many other countries especially during the second half of the XX century, when, it contributed in particular to the development of a form of judicial protection against unconstitutional acts, through the combination of principles and rules adopted in the United States with principles and rules adopted in some European countries in order to pursue similar aims. In Europe, special «Constitutional Courts» were frequently created, separated from the ordinary judiciary, which exercised different forms of constitutional justice. The centralized system of judicial review also spread to other parts of the world, where constitutional courts often expanded their jurisdiction well beyond the control of the constitutionality of legislation, though their fundamental goal was to ensure the respect of constitutional principles and the protection of fundamental rights of citizens. Therefore, alongside the judicial review of legislation («incidenter», with respect to an actual proceeding, as well as «principaliter», following to a direct recourse placed before the Court), the jurisdiction of constitutional courts extended to conflicts arising from the allocation of powers among constitutional bodies, actions for the «direct» protection of the fundamental rights of citizens, actions on electoral matters, and on the admissibility of referendum, proceedings on crimes committed by the state highest officials in the exercise of their duties, those on the constitutionality of political parties, etc... As a consequence, the importance of «judge made law» grew as to balance the role of «statutory law», which, during the period of the maximum development of legal positivism, had tried to exercise a sort of monopoly among the sources of law. In Italy as well, the Constitutional Court, which began to operate in 1956, has been vested with a rather wide, which made it possible for the Constitution of 1947 to establish as the foundation of democratic institutions.